

PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM...

Monday, January 25, 2010

The U.S. Supreme Court has scheduled oral argument in the *Castaneda* case for 11 a.m. on Tuesday, March 2. The Court will decide whether U.S. Public Health Service (PHS) officials can be sued for violating the Constitution and causing the penile amputation and death of immigration detainee Francisco Castaneda through conduct that, in the district court's words, "transcends negligence by miles" and appears to be "one of the most, if not the most, egregious Eighth Amendment violations the Court has ever encountered."



Francisco Castaneda

The government health officials contend that, even if they blatantly violated Mr. Castaneda's constitutional rights, they cannot be held personally accountable. They claim that Mr. Castaneda's surviving family members and estate are limited to a negligence suit against the United States under the Federal Tort Claims Act (FTCA) because a provision of the Public Health Service Act immunizes them from lawsuits for constitutional violations, commonly known as *Bivens* actions.

In fact, Congress never intended to immunize PHS officials from liability for violating the Constitution. The FTCA - which applies to all federal employees and which is incorporated within the Public Health Service Act - expressly states that "it does not extend or apply to a civil action against an employee of the Government ... for a violation of the Constitution of the United States."

Both the district court and the U.S. Court of Appeals for the Ninth Circuit unanimously rejected the PHS officials' bid for immunity. **The Ninth Circuit said that the PHS defendants "provided no explanation for why Congress would want to provide these persons with the privilege, shared with no other federal employees, to violate the Constitution without consequence."**

To read our brief to the U.S. Supreme Court in *Hui v. Castaneda*, [click here](#).

Click on the links that follow to read the *amicus* briefs filed by [Members of Congress](#), [National Experts on Health Services](#), the [ACLU](#), and the [National Immigrant Justice Center](#).

To read Managing Attorney Adele Kimmel's "Access to Justice Update" on the *Castaneda* case, [click here](#).

With your help, Public Justice's Supreme Court litigation team - Conal Doyle of Oakland, CA; Kimmel; Goldberg, Waters & Kraus Fellow Amy Radon; Staff Attorney Leslie Brueckner; Tom Dempsey of Los Angeles; and me - will continue to fight to hold government officials accountable for blatantly violating Francisco Castaneda's constitutional rights.

Thank you for making this important work possible. - Arthur

Arthur Bryant
Executive Director

Public Justice and the
Public Justice Foundation

P.S. Please forward this email to friends and colleagues who'd be interested. (When you do so, delete the information below about unsubscribing, or they could unsubscribe you.) To make a special contribution, renew your membership, or join us, please [click here](#).

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